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10 Lisa Ostella and
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11 Lisa Liberi, Plaintiff
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14
15 **UNITED STATES DISTRICT COURT**
FOR THE CENTRAL DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

16
17 LISA LIBERI, et al,

CIVIL ACTION NUMBER:

18 Plaintiffs,

8:11-cv-00485-AG (AJW)

19
20 vs.

**PLAINTIFFS MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF THEIR EX PARTE
APPLICATION**

21
22 ORLY TAITZ, et al,

23 Defendants.

Date of Hearing: May 31, 2011
Time of Hearing: 10:00 a.m.
Location: Courtroom 10D

1 **PLAINTIFFS MEMORANDUM OF PONITS and AUTHORITIES IN**
2 **SUPPORT OF THEIR APPLICATION FOR AN EX PARTE ORDER**

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4 **ARGUMENT**
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6 **I. SUBSTANTIAL PREJUDICE WILL OCCUR IF THE TIME**
7 **FOR A HEARING ON THE MOTION FOR LEAVE TO**
8 **AMEND THEIR COMPLAINT and FOR AN ORDER THAT**
9 **LEAVE IS REQUIRED PRIOR TO THE FILING OF ANY**
MOTIONS, IS NOT SHORTENED

10 3. Federal Rule of Civil Procedure [“Fed. R. Civ. P.] 6(c) allows the
11 Court to Order a Motion to be heard on an accelerated basis “for good cause.” *Fed.*
12 *R. Civ. P.* 6(c)(1)(C). Moreover, *C.D. Cal. Civ. L.R.* 6-1 provides that a court may
13 order a shorter time.
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15 4. Plaintiffs Application Ex Parte for an Order on Plaintiffs Motion for
16 Leave to Amend their Complaint or in the alternative Plaintiffs request to Shorten
17 Time is based on the fact, counsel and/or the Plaintiffs must fly into California
18 every time a Hearing is set, which is extremely expensive. Defendant Taitz on
19 behalf of herself and Defend our Freedoms Foundations, Inc. [hereinafter at times
20 DOFF”] filed a Motion with this Court to “Terminate” Philip J. Berg, Esquire as
21 counsel for the Plaintiffs, even though Mr. Berg has been representing the
22 Plaintiffs since May 4, 2009; even though Mr. Berg is Plaintiffs Choice of
23 Counsel; Mr. Berg is very familiar with this Case and the events thereto and ready
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1 to continue his representation in California. This Hearing is set for May 9, 2011
2 before this Court.
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4 5. In addition, on April 25, 2011, Taitz has filed another Motion to
5 Dismiss this Case pursuant to Anti-SLAPP and *Fed. R. Civ. P.* 12(b)(1) and
6 12(b)(6). This Hearing date has been set for May 23, 2011 before this Court.
7 Although Taitz has filed a previous Anti-SLAPP Motion, almost identical to this
8 one, and numerous Rule 12 Motions, which have all been litigated and adjudicated,
9 even though the repeated filing are inappropriate and incompliant with the *Fed. R.*
10 *of Civ. P.* Moreover, the Scheduling Conference has been set in this Case for June
11 6, 2011.
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13 6. As this Court is aware, the filing of an Amended Complaint moots
14 any pending Motions to Dismiss, including Anti-SLAPP Motions. There is no
15 reason to have a Hearing on May 23, 2011 and another Hearing on May 31, 2011,
16 a week apart, if this Court is inclined to Grant Plaintiffs Motion and allow them to
17 file their First Amended Complaint. Not that Mr. Berg minds appearing before
18 Your Honor, there is simply no reason to have Mr. Berg fly in every week, when it
19 is more cost efficient to have Plaintiffs Motion for Leave to Amend their
20 Complaint heard on the 9th of May at the same time as Defendants Motion, if the
21 Court feels a Hearing is necessary.
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1 7. Moreover, as the Docket clearly indicates, on Thursday, April 28,
2 2011, the Court sent a deficiency notice to Taitz regarding her Motion to Dismiss.
3
4 Taitz again has not followed the rules of this Court, her brief is too long, the brief
5 is single spaced instead of double in many places, Taitz failed to number her
6 paragraphs, and she did not give enough notice with the date of the Hearing she
7 chose. It should also be noted, Taitz continues referring to Evelyn Adams as a
8 Plaintiff herein. Ms. Adams is a Plaintiff in the Texas case, not the California
9 case.

12 8. Plaintiffs will be severely prejudiced if this Court denies their request
13 to shorten time. The travel expenses alone are extremely expensive and it takes
14 Counsel away from his Office for several days at a time for a Hearing on
15 Defendant Taitz's Motion to Dismiss, which will be deemed moot, once Leave is
16 Granted for Plaintiffs to file their First Amended Complaint. Plaintiffs must
17 Respond to Taitz's Motion, again which will be moot once the Court Grants
18 Plaintiffs Leave to Amend their Complaint. There is no question in the Plaintiffs
19 minds that once Plaintiffs are Granted Leave to file their Amended Complaint, and
20 actually file their First Amended Complaint, Defendant Taitz will bring forth yet
21 another Motion to Dismiss, which will require another Hearing.
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26 9. Moreover, when the case was in Pennsylvania, the Court on its own
27 issued an Order that all parties were to seek Leave of Court prior to the filing of
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any Motions. It slowed Defendant Taitz down from filing Motions, however, despite the Court’s Order; Taitz continued filing Motions without first seeking Leave, in violation of the Court’s Order. Taitz will continue filing Motions, having Hearings set, wasting judicial resources to ensure she makes it so expensive for Plaintiffs; they will not be able to litigate their case. For this reason, to stop the clogging of the Court’s Docket; and to stop the allowance of convoluting the Case, this Court must issue an Order Preventing the Filing of any Motions without first seeking Leave.

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Attorney for Plaintiffs

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Defendant in Pro Se

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Defendants in Pro Se

11. Pursuant to this Court's L.R. 7-19.1, it is Counsel moving for the Ex Parte Order to "(a) to make reasonable, good faith efforts orally to advise counsel for all other parties, if known, of the date and substance of the proposed ex parte application; and (b) to advise the Court in writing and under oath of efforts to contact other counsel and whether any other counsel, after such advice, opposes

1 the application. In compliance with this Court's rule, counsel emailed all parties
2 on Wednesday, April 27, 2011 and sent a letter via facsimile on Wednesday, April
3 27, 2011 prior to the filing of the within Application and Motion for Leave of
4 Court to file Plaintiffs First Amended Complaint; and for an Order that parties
5 must seek Leave of Court prior to the filing of any Motions. Counsel's email and
6 letter are attached to Mr. Berg's Declaration filed concurrently herewith.
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9 12. As of the date of filing, Berg received an out-of-office reply from
10 Todd Sankey of the Sankey Firm, Inc.; all Plaintiffs received an email from Orly
11 Taitz threatening the Plaintiffs with Attorney fees and threatening to report Berg
12 for practicing law without a license and claimed Plaintiffs Motion was frivolous.
13 Taitz stated she would oppose Plaintiffs Ex Parte Application and Motion. As of
14 the date of filing, Neil Sankey on behalf of Sankey Investigations and the Sankey
15 Firm, Inc. had not replied.
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19 13. Despite Counsel's efforts, as this Court is aware, this Court has the
20 inherent Power to Grant Plaintiffs Motion Granting them Leave to file their First
21 Amended Complaint; and issue an Order that Parties must seek Leave of Court
22 prior to filing any Motions with the Court, without notice being provided. *See* this
23 Court's L.R. 7-19.2.
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1 **II. CONCLUSION**

2 For the reasons outlined herein, and for judicial economy, Plaintiffs
3 respectfully pray this Court grants their Application for an Ex Parte Order on
4 Plaintiffs Motion for Leave to File a First Amended Complaint; and for an Order
5 of this Court that all Parties must seek Leave of Court prior to the filing of any
6 Motions.

7 Respectfully submitted,

8 Dated: April 29, 2011

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10 _____
11 /s/ Philip J. Berg
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19 Counsel for the Plaintiffs

20 Dated: April 29, 2011

21 _____
22 /s/ Lisa Ostella
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28 Dated: April 29, 2011

29 _____
30 /s/ Lisa Liberi
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